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NEW DELHI, SATURDAY, NOVEMBER 27, 1993/AGRAHAYANA 6, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 9 नवम्बर 1993

आ. अ. 124.—नोट प्रतिनिधित्व अधिनियम,
1951 (1951 का 43) की धारा 106 के अनुसरण
में, निर्वाचन आयोग 1990 की निर्वाचन अर्जी सं. 2,
राजस्थान उच्च न्यायालय, जोधपुर के तारीख 13-10-93
का निर्णय एतद्वारा प्रकाशित करता है।

[संख्या 82/राज. लो. सं. (2/90)93]

आदेश से

बलवन्त सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 9th November 1993

O.N. 124.—In pursuance of section 106 of the
Representation of the People Act, 1951 (3 of 1951),
the Election Commission hereby publishes the order
dated 13-10-1993 of the High Court of Rajasthan at
Jodhpur in the Election Petition No. 2 of 1990.

[No. 82/RJ-HP/(2/90)93]

By Order,

BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR

SHANTILAL VS. GUMAN MAL LODHA

S. B. Election Petition No. 2/1990

U/S. 80-A, Representation of the People Act, 1951.
DATE OF ORDER 13TH OCTOBER, 1993

PRESENT :

Hon'ble Mr. Justice Rajendra Saxena

Mr. Vinayak M. Joshi, for the Petitioner. Mr.
L. R. Mehta.

Mr. Arun Bhansali, for the respondent.

BY THE COURT :

The petitioner, who is an elector of Pali Lok Sabha
Constituency, has filed this election petition under
sec. 80-A of the Representation of the People Act,
1951 (hereinafter referred to as 'the Act') and chal-
lenged the election of respondent Shri Guman Mal
Lodha, who has been declared elected as member of
Parliament from Pali (Parliamentary Constituency

No. 21) on 16th June, 1991, on the ground of alleged corrupt practice described in para 3 of the petition and prayed that the impugned election be declared as void.

2. On 6-1-92, Mr. Rajendra Mehta, Advocate, appeared for the respondent in the Court and accented the notice alongwith the copy of the election petition. He was also supplied with another copy of the election petition by the Registry on 13-1-92. The respondent filed an application under ss.81, 83 r/w sec 86 (1) of the Act and raised inter-alia the following preliminary objections regarding the maintainability of this election petition :

- (i) That the copy of election petition served on him is not a true and correct copy of the original election petition nor it has been attested to be the true copy by the petitioner and, as such, the mandatory provisions of Sec. 81 of the Act have not been complied with;
- (ii) That the copy of the audio cassette Annex. 6 described in sub para () of para 3 of the election petition, which purports to form an integral part of the election petition, has not been furnished;
- (iii) That the copies of petitioner's affidavit, which forms an integral part of the election petition, is not the true copy of the affidavit and the same does not bear the endorsement of its attestation and blank space has been left after writing sd.-; and
- (iv) That none of the copies of the Annex. 3 to 5, which also form integral part of the election petition, have not been duly signed and verified by the petitioner.

3. The respondent has, therefore, prayed that this election petition be dismissed.

4. The petitioner in his reply dt. 12-11-92 asserted that the copies of the election petition and the affidavit furnished to the respondent bear his signatures; that those are true and correct copies and that as such, provisions of Sec. 81 (3) have been sufficiently complied-with. He, however, admitted that this election petition was filed on the last day of the expiry of limitation i.e. 31-7-91 and that the audio cassette Annex. 6, which was lying with the petitioner, was misplaced and that the same could not be submitted alongwith the election petition. He informed that he was separately submitting an amendment application for deletion of the relevant para in the election petition. He also admitted that in para No. 3 () of the election petition, the date of the meetings held in Pali and various villages of the Parliamentary Constituency was not mentioned in the election petition. He, however, asserted that for such a technical objection the election petition cannot be dismissed.

5. The respondent in his rejoinder dt. 25-1-93 reiterated that the audio cassette Annex. 6 and the affidavit in support of election petition being integral parts of the election petition, non-supply of their true

copies is a fatal defect warranting dismissal of the election petition.

6. On 12-11-92, the petitioner also filed an amendment application under 0.6 R.17 CPC praying for deletion of para 3 () of the election petition. The respondent in his reply dt. 25-1-93 has vehemently opposed this application on the ground that the removal of fatal infirmities in the election petition by way of amendment will cause substantial prejudice to him.

7. I have heard learned counsel for the parties at length on petitioner's amendment application as well as on the preliminary objections raised on behalf of the respondent regarding the maintainability of this election petition and perused the relevant record in extenso.

8. In Re : Amendment Application.—The petitioner vide para 3 () of the election petition has pleaded that the respondent with his consent and with the assistance of his supporters/agents got convened various religious meetings in Pali and various villages in Parliamentary Constituency and that those meetings were addressed by Sadhvi Ritumbhara, wherein she used insulting words against muslims and requested the electorate to vote for the respondent in the name of and for Hindu religion. In para 3 (), it has been pleaded that the audio cassettes (Annex. 6) containing speeches given by Sadhvi Ritumbhara were also played and distributed in respondent's election campaign. However, the dates of these meetings and the names of the villages were not mentioned. The petitioner now wants to delete the third line of part 3 (), wherein the dates of those meetings have been left blank and para 3 () pertaining to audio cassette (Annex.6).

9. Sec. 83 of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies, shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The proviso to this section clearly lays down that where the petitioner alleges any corrupt practice, the petitioner shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Sub section 2 of Sec. 83 of the Act further requires that any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

10. The petitioner has challenged the election of respondent on the basis of the alleged corrupt practice. In such circumstances, the audio cassette (Annex. 6) forms an integral part of the election petition. Admittedly, the petitioner has neither submitted the audio cassette alongwith the election petition in the Court nor has supplied a copy thereof to the respondent.

The petitioner has also not disclosed the material particulars regarding the dates and places and names of the villages where meetings were addressed by Sadhvi Ritumbhara in para 3() of the election petition. The respondent specifically pointed out these vital and material infirmities and raised preliminary objection about the maintainability of the election petition. Thereafter, the petitioner has filed this application for amendment apparently in order to remove those substantial and material defects. Such amendment cannot be allowed/permitted because it will defeat the provisions of Secs. 83, 81 r/w 86(1) of the Act. Every election petition can be saved by amendment in this way, but that is not the policy of law. The proposed amendment will also cause substantial prejudice to the respondent. To my mind, this amendment application is mala fide and to remove fatal defects in this election petition. I, therefore, dismiss petitioner's application for amendment of the election petition.

11. In Re : Preliminary Objections regarding maintainability of election petition.—The respondent has submitted copies of the petition and the affidavit of petitioner Shantilal marked Ex. R/1 and R/2, which were furnished to him by the petitioner and through the Registry. A perusal of these copies reveals that though each paper thereof bears the signature of Shantilal, but the same does not bear the attestation of the petitioner to the effect that it is a true copy of the petition and the affidavit. At page 4 of the affidavit of the petitioner at the place of signature of deponent, only the word "sd/-" has been written and the name and signature of the deponent have not been mentioned. Moreover, the copy of the affidavit also does not bears any endorsement of the Notary Public/Magistrate/Oath Commissioner regarding the attestation of the said affidavit.

12. Section 81(3) of the Act runs as under :—

"Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

The proviso to clause (c) sub sec. (1) of sec. 83 of the Act mandates that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Therefore, where any corrupt practice is pleaded, the election petition must be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

13. R.94-A of the Conduct of the Election Rules, 1961, in short, "the Rules of 1961", specifically lays down that the affidavit referred-to in proviso to sub sec. 1 of sec. 83 of the Act shall be sworn before a Magistrate of the first class or a Notary or a Commissioner of Oaths and shall be in Form 25.

14. Form 25 besides the affidavit of deponent also contains the following endorsement :—

Solemnly affirmed/sworn by Shri/Smt.
..... at this
day of 19.....
Before me Magistrate of the first class
Notary/Commissioner of Oaths."

Therefore, to constitute an affidavit as required under R. 94A of the Rules of 1961, besides the affidavit of the deponent, the endorsement regarding attestation of the affidavit and the name and designation of the person attesting the affidavit is also necessary. In other words, such attestation is a sine qua non for a valid and legal affidavit.

15. In F.A. Sapa etc. v. Singora and others etc. (AIR 1991 SC 1557), the Apex Court has pointed out that a charge of corrupt practice has its two dimensional effects : its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. It has further pointed out that any allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirement of sec. 83 before the parties go to trial. Their lordships have held that even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the Court in a given case to doubt the veracity of the evidence ultimately tendered, but if whether the affidavit or the schedule or the annexure which forms an integral part of the election petition itself, strict compliance would be insisted upon. Therefore, the maintainability of an election petition in the context of the point at hand will depend on whether the affidavit or the schedule or the annexure to the petition constitutes an integral part of the petition or not. If it constitutes an integral part, it must satisfy the requirements of sec. 81 (3) of the Act and failure in that behalf would be fatal.

16. The Hon'ble Supreme Court in M. Kamlam vs. Dr. V. A. Syed Mohammed (AIR 1978 SC 840) has held as under :—

"5. Now, the first question which arises is as to what constitutes an election petition for the purpose of sec. 81, sub-section (3). Is it confined only to election petition proper or does it also include a schedule or annexure contemplated in sub-section (3) of section 83 or a supporting affidavit referred to in the proviso to section 83, sub-section (1)? To answer this question, we must turn to section 83, which deals with contents of an election petition. Sub-section (1) of that section sets out what an election petitioner shall contain and provides that it shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso requires

that where the petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. The context in which the proviso occurs clearly suggests that the affidavit is intended to be regarded as part of the election petition. Otherwise, it need not have been introduced in a section dealing with contents of an election petition nor figured as a proviso to a sub-section which lays down what shall be the contents of an election petition. Sub-section (2) also by analogy supports this inference. It provides that any schedule or annexure to an election petition shall be signed by the petitioner and verified in the same manner as an election petition. It is now established by the decision of this Court in *Sahodrabai Rai v. Ram Singh Aharwar* (AIR 1968 SC 1079) that sub-section (2) applies only to a schedule or annexure which is an integral part of the election petition and not to a schedule or annexure, which is merely evidence in the case but which is annexed to the election petition merely for the sake of adding strength to it."

Hence, it is well settled that if an affidavit, schedule or annexure is an integral part of the election petition, then it must be signed by the petitioner and verified since it forms part of the election petition.

17. Similarly in *M. Karunanidhi v. H. V. Handa and Ors.* (AIR 1983 SC 558) and AIR 1987 SC 208, it has been categorically held that an affidavit in support of allegation of corrupt practice forms an integral part of the ground of corrupt practice and such an affidavit forms an integral part of the election petition.

18. It is needless to mention that in India, the election law being statutory in character must be strictly complied with and since an election petition is so guided by every changing common law principles of justice and notions of equity being statutory in character, it is essential that it must conform to the requirements of the Act.

19. In *Purushottam v. Returning Officer, Amravati and Ors.* (AIR 1992 Bombay 227), the election of a member of Maharashtra Legislative Council was challenged on several grounds inter alia on the allegations of corrupt practice. The returned candidate filed an application for dismissal of the election petition for the violation of the mandatory provisions of Section 81(3) r/w 83 and 86 of the Act and a preliminary objection was taken to the effect that copy of the affidavit filed by the petitioner under r. 94A of the Rules of 1961 was not in conformity with Form 25 and the mandate of law and that the said affidavit was also vague and incomplete. There was no endorsement of the Notary on the copy of the affidavit accompanying the election petition. It was held that the absence of the endorsement of the Notary on the copy of the affidavit accompanying election petition renders the copy as not conforming the requirements of S. 81(3) of the Act and the election petition was dismissed on account of that omission.

20. In *Jhamaklal vs. Dr. L. N. Pande and another*, Election Petition No. 9/91 decided on 7-12-1992, the Madhya Pradesh High Court Bench at Indore has held that omission in the copy of affidavit as supplied to the respondent cannot be held to be inconsequential, because the affidavit in support of ground of corrupt practice is an integral part of election petition and that such omission offends the mandatory provision of S. 81(3) of the Act and the election petition was dismissed.

21. Similar are the facts of the case in hand. Admittedly, in the copies of the affidavit of the petitioner supplied to the respondent, the endorsement regarding attestation of the affidavit is conspicuously missing. There is neither the name nor the designation nor the stamp of the person, who attested the affidavit nor the endorsement regarding affirmation. Hence, in the eye of law, it is not at all a copy of the affidavit as required under R. 94A and Form 25 of the Rules of 1961. The endorsement of an affidavit is not merely formal but is very vital and material, because it is the affirmation or attestation that gives the sanctity to the affidavit and without such affirmation or attestation, such document cannot be held to be an affidavit. Proviso to sub-section (1) of Section 83 makes an affidavit necessary in support of the charges for corrupt practice because from the affidavit, the respondent can ascertain whether infact the contents were sworn affirmed and signed before the Magistrate of the Notary or the person in whose presence, swearing of the affidavit was made, had the authority to administer oath. In absence of such endorsement regarding affirmation, the respondent shall not be in a position to point out that the person who is said to have administered the oath, was not in existence or had no authority to administer oath or that the signature and the endorsement of the document purported to have been made by the alleged Authority were fake. If the copies of the affidavit are not faithful and do not include these endorsements, a valuable right of the respondent is taken away and considering the purpose which the copy of the endorsement would serve, it cannot be said that this portion would not be integral part of the affidavit. Since, these details from an integral part of the affidavit, furnishing a copy without that portion would not be furnishing a complete copy of the affidavit which, in its turn, is integral part of the election petition. Therefore, simply because the copy of the affidavit has been signed by the petitioner, it cannot be held to be a true copy of the affidavit as required under Section 81(3) r/w S. 83 of the Act. Hence, this material omission and glaring lapse on the part of this petitioner cannot be held to be formal or inconsequential.

22. In my considered opinion, this is a clear cut case of violation of the mandatory provisions of S 81(3) r/w Section 83 of the the Act, which is likely to cause material prejudice to the respondent. In such circumstances, this election petition is liable to be dismissed on this preliminary objection alone keeping in view the mandatory provisions of Section 86(1) of the Act.

23. There is also no dispute that the copies of the election petition as well as annexures 3, 4 & 5, which pertain to alleged corrupt practice and which also

form integral part of the election petition simply bear the signature of the petitioner, but those have not been attested by him that those are true copies of the petition and annexures 3, 4 and 5. Therefore, on this count also, the provisions of Section 81(3) of the Act have been offended.

24. In such circumstances, the preliminary objections raised on behalf of the respondent are sustained and this election petition is hereby dismissed under Section 86(1) of the Act as not maintainable with cost, which is quantified as Rs. 2,000.

Sd/-

RAJENDRA SAXENA, J.

नई दिल्ली, 9 नवम्बर, 1993

आ. आ. 125--नोट प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) को धारा 106 के अनुसूचन में, निम्नलिखित आदेश, 1991 को अर्जी सं. 1, राजस्थान उच्च न्यायालय जोधपुर के तारीख 15-10-93 का निर्णय एवम् द्वारा प्रकाशित करता है।

[सं. 82/राज. लो. सं. (1/91)/93]

आदेश के

बलवंत सिंह, सचिव

New Delhi, the 9th November, 1993

O.N. 125.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order dated 15-10-1993 of the High Court of Rajasthan, at Jodhpur in Election Petition No. 1 of 1991.

[No. 82/RJ-HP](1 of 91)93]

By Order,

BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

JAI SINGH Vs. RAMSINGH & OTHERS.

S. B. Election Petition No. 1 of 1991 under Sections 80 and 81 read with Section 100 (1) (d) (iii) & (iv) and Section 101 of the Representation of the People Act, 1951.

DATE OF ORDER : OCTOBER 15, 1993.

PRESENT :

HON'BLE MR. JUSTICE A. K. MATHUR

Mr. M. M. Singhvi, Mr. R. G. Purohit—for the petitioner.

Mr. L. R. Mehta, Mr. Arun Bhansali—for the respondent No. 1.

BY THE COURT :

This is an election petition filed by Shri Jai Singh (defeated candidate) against Shri Ram Singh, respondent No. 1 (returned candidate) from the Churu Parliamentary Constituency No. 3 of Rajasthan in the election held on 20-5-1991. Shri Ram Singh was declared elected by a margin of 168 votes only i.e. the petitioner was polled 1,89,400 votes whereas Shri Ram Singh was polled 1,89,568 votes.

The election petition was filed by Shri Jai Singh for inspection and recount of the votes and it is also prayed that as a result of such recount of votes the election of respondent No. 1 Shri Ram Singh be set aside and declared void and the petitioner be declared to have received majority of valid votes and he be further declared to have been duly elected from the Churu Parliamentary Constituency No. 3 of Rajasthan.

The election petition was heard and it was allowed in part by this Court by the order dated 4-8-1993 and the petitioner's prayer for inspection and recount of the postal ballots and of the 11 polling stations as contained in Part II of Form No. 16 i.e. Ex. 71. Kunsisar, Ex. 76 Sujangarh, Ex. 78 Daudsar, Ex. 81 Simsiyabida, Ex. 82 Dhadhalshera, Ex. 90 Gagor, Ex. 91 Ratanpura, Ex. 97 Jaislan, Ex. 99 Tatia Ki Dharamshala, Ex. 101 Jaisingsar and Ex. 103 Ladera was accepted.

In pursuance of the aforesaid direction, the inspection and recount of the aforesaid 11 polling stations and the postal ballots, which were rejected i.e. 1060, were recounted in the presence of both the parties. The proceedings thereof have been separately recorded from 27th September, 1993 to 4th October, 1993.

As a result of the inspection and recount of the 11 polling stations as mentioned above; on recount of the ballots of the Polling Station No. 94 Tatia Ki Dharamshala Ex. 99 it was found that one vote of Shri Sabir Ali was wrongly counted in favour of Shri Ram Singh and one more vote was wrongly counted in favour of Shri Ram Singh because the seal impression was in the shaded area. Therefore, these two votes were wrongly counted in favour of Shri Ram Singh and they are reduced from the tally of Shri Ram Singh.—2 Ram Singh.

The ballots of the Polling Station No. 139 i.e. Gagor of Taranagar Segment Ex. 90 were not received initially but were received subsequently. The ballots of Shri Ram Singh i.e. 137 were recounted and it was found that one ballot was found blank as it did not bear the seal impression against any candidate. Therefore, it was wrongly counted in favour of Shri Ram Singh. Likewise two ballots of Shri Bheekamchand Ojha were wrongly counted in favour of Shri Ram Singh. Likewise two ballots which were casted in favour of Shri Jai Singh were wrongly counted in favour of Shri Ram Singh. Therefore, 5 ballots were wrongly counted in favour of Shri Ram Singh and they are reduced from the total tally of Shri Ram Singh (-5) from 137-5=132. Therefore, two ballots may be added to the total tally of Shri Bheekamchand Ojha and two should be added to the

total tally of Shri Jai Singh (+2) and one ballot was found to be blank, therefore, it deserves to be rejected. Thus, 5 votes should be reduced from the total tally of Shri Ram Singh and two votes should be added to the total tally of Shri Jai Singh.

In the counting of rest of the polling stations i.e. No. 19, 142, 34, 150, 8, 107, 144 and 130 no mistake was found.

Thereafter the postal ballots which were contained in separate packets were opened. Each packet containing the postal ballots was marked. The envelop containing the postal ballot was also marked serial number.

The 1520 total postal ballots were received by the returning officer. He accounted for 460 but failed to mention the fate of the remaining 1060 postal ballots.

During the inspection and counting of the postal ballots i.e. 1060 it was found that all the ballots were rejected by the returning officer but he failed to give any endorsement on each envelop containing the postal ballot as to why they were rejected. However, on opening of the envelop a large number of ballots were found to be rightly rejected but in some of the ballots which were rejected and issue was raised by the learned counsel for the petitioner that the returning officer has wrongly rejected some of the postal ballots in which the declaration form did not contain the serial number of the ballot. Learned counsel submitted that only those postal ballots can be rejected where the declaration form bears wrong serial number of the ballot paper under Rule 54-A of the Conduct of Elections Rules, 1961 (hereinafter referred to as 'the Rules of 1961') and not otherwise. Learned counsel has also raised an issue that some of the ballots were not sent in the envelop meant for the postal ballots and the postal ballots were directly sent without covering. Therefore, the rejection of such postal ballot papers is also not correct.

I will advert to both these aspects of the matter at appropriate stage. But as a result of the total counting of these 1060 postal ballots a large number of votes were found to be rightly rejected. The result of the inspection and recounting of the postal ballots is given in a chart form hereunder :—

Pocket No.	Rightly rejected.	Declaration form does contain S. No.	Inter-changed envelop
3.	26	20	
4.	33	21	

(Two votes were wrongly rejected. Therefore they were opened. Out of these two postal ballots one was found in favour of Shri Ramsingh and the other was found in favour of Shri Jai Singh).

1 Ramsingh

1 Jaisingh.

5.	33	28	4
6.	29	12	6
8.	30	21	8
9.	26	23	3

(One postal ballot was found to be wrongly rejected and on opening it was found in favour of Shri Ram Singh).

1 Ramsingh.

10.	43	10	8
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(Two envelopes were found to be wrongly rejected. Therefore, they were opened and out of them one was found in favour of Shri Daulat Ram Saran and the other was found in favour of petitioner Shri Jai Singh).

1 Jaisingh.

11	30	14	7
12	35	14	9
13	33	7	10
14	38	36	14
15	36	17	3
16	29	17	10
17	42	27	10
18	36	22	14
19	49	23	12
23	48	22	12

(One postal ballot was wrongly rejected. Therefore, it was opened and it was found in favour of Shri Daulatram Saran).

Learned counsel for the petitioner has raised two issues; one, that the postal ballots in which the declaration form did not contain the serial number of the postal ballot, should not have rejected under Rule 54-A and second, that the postal ballots which have been received directly in the envelop meant for the postal ballot i.e. in Form No. 13B (Cover A) should not have been rejected.

In order to appreciate the controversy which has been raised by the learned counsel for the parties for these two categories of postal ballots which have been rejected by the returning officer, it will be necessary to refer to the relevant provisions of law :—

Rule 23 of the Rules of 1961 deals with issue of ballot paper, which reads as under :—

"23. Issue of ballot paper.—(1) A postal ballot paper shall be sent by post under certificate of posting to the elector together with—

- a declaration in Form 13A;
- a cover in Form 13B;
- a large cover addressed to the returning officer in Form 13C; and
- instructions for the guidance of the elector in Form 13D:

Provided that the returning officer may, in the case of a special voter or a voter on election duty, deliver the ballot paper and forms, or cause them to be delivered, to such voter personally.

) The returning officers shall at the same time —

- record on the counterfoil of the ballot paper the electoral roll number of the

elector as entered in the marked copy of the electoral roll;

- (b) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him, without however recording therein the serial number of the ballot paper issued to that elector; and
- (c) ensure that that elector is not allowed to vote at a polling station.
- (3) Before any ballot paper is issued to an elector at an election in a local authorities' constituency or by assembly members, the serial number of the ballot paper shall be effectively concealed in such manner as the Election Commission may direct.
- (4) Every officer under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay.
- (5) After ballot papers have been issued to all the electors entitled to vote by post, the post, the returning officer shall —
 - (a) at an election in a parliamentary or assembly constituency, seal up in a packet that part of the marked copy of the electoral roll which relates to service voters and record on the packet a brief description of its contents and the date on which it was sealed and send the other relevant parts of the marked copy to the several presiding officers or marking the names of electors to whom ballot papers are issued at the polling stations without however recorded therein the serial numbers of the ballot papers issued to the electors; and
 - (b) at any other election, seal up in a packet the marked copy of the electoral roll and record on the packet a brief description of its contents and the date on which it is sealed.
- (6) The returning officer shall also seal up in a separate packet the counterfoils of the ballot papers issued to electors entitled to vote by post and record on the packet a brief description of its contents and the date on which it was sealed."

Rule 54 of the Rules of 1961 says that the secrecy of the ballot should be maintained. Rule of the Rules of 1961 reads as under :—

"54. Maintenance of secrecy of voting.—The returning officer shall, before he commences the counting, read out the provisions of section 128 to such persons as may be present."

Rule 54-A deals with the counting of the votes received by post, which reads as under :—

- "54A. Counting of votes received by post.—(1) The returning officer shall first deal with the postal ballot papers in the manner hereafter provided.
- (2) No cover in Form C received by the returning officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted.
 - (3) The other covers shall be opened one after another and as each cover is opened, the returning officer shall first scrutinise the declaration in Form 13A contained therein.
 - (4) If the said declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13B, that cover shall not be opened, and after making an appropriate endorsement thereon, the returning officer shall reject the ballot paper therein contained.
 - (5) Each cover so endorsed and the declaration received with it shall be replaced in the cover in Form 13C and all such covers in Form 13C shall be kept in a separate packet which shall be sealed and on which shall be recorded the name of the constituency, the date of counting and a brief description of its content.
 - (6) The returning officer shall then place all the declarations in Form 13A which he has found to be in order in a separate packet which shall be sealed before any cover in Form 13B is opened and on which shall be recorded the particulars referred to in sub-rule (54).
 - (7) The covers in Form 13B not already dealt with under the foregoing provisions of this rule shall then be opened one after another and the returning officer shall scrutinise each ballot paper and decide the validity of the vote recorded thereon.
 - (8) A postal ballot paper shall be rejected —
 - (a) if it bears any mark other than the mark to record the vote or writing by which the elector can be identified; or
 - (aa) if no vote is recorded thereon; or
 - (b) if votes are given on it in favour of more candidates than one;
 - (c) if it is a spurious ballot paper; or
 - (d) it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

- (c) if it is not returned in the cover sent alongwith it to the elector by the returning officer.
- (9) A vote recorded on a postal ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such manner as to make it doubtful to which candidate the vote has been given.
- (10) A vote recorded on a postal ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.
- (11) The returning officer shall count all the valid votes given by postal ballot in favour of each candidates, record the total thereof in the result sheet in Form 20 and announce the same.
- (12) Thereafter, all the valid ballot papers and all the rejected ballot papers shall be separately bundled and kept together in a packet which shall be sealed with the seals of the returning officer and of such of the candidates, their election agents or counting agents as may desire to affix their seals thereon and on the packet so sealed shall be recorded the name of the constituency, the date of counting and a brief description of its contents."

According to Rule 54A, the Returning Officer shall first deal with the postal ballots. Sub-rule (2) says that no cover in Form 13C received by the returning officer after expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. Sub-rule (3) says that other covers shall be opened one after another and as each cover is opened, the returning officer shall first scrutinise the declaration in Form 13A contained therein.

The relevant portion of declaration form 13A reads as under :—

"I hereby declare that I am the elector to whom the postal ballot paper bearing serial number has been issued at the above election.

Signature of elector

Date Address

... ..

Attestation of signature

Sub-rule (4) says that if the said declaration is not found, or has not been duly signed and attested, or otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in

Form 13B, that cover shall not be opened, and after making an appropriate endorsement thereon, the returning officer shall reject the ballot paper therein contained. The normal procedure is that there is one outer cover which is called Form 13C. It contained the declaration form i.e. Form 13A and it also contained a Form 13B which has a ballot paper in it and over that envelop the serial number of the ballot paper is mentioned. The format of Form 13B is reproduced hereunder :—

FORM 13B

(Cover A)

A NOT TO BE OPENED BEFORE COUNTING
ELECTION

to the

POSTAL BALLOT PAPER

Serial number of ballot paper.....

The format of Form 13C is also reproduced hereunder :—

FORM 13C

(Cover B)

(To be used at an election to the House of the People for the Legislative Assembly of a State).

COVER

***SERVICE

"B"

UNPAID

("Every office under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay-Rule 23(4) of the Conduct of Election Rules, 1961).

ELECTION—IMMEDIATE

.....

POSTAL BALLOT PAPER

.....

ForConstituency

(NOT TO BE OPENED BEFORE COUNTING)
To,

The Returning Officer

Signature

of sender

The envelop containing the ballot which is called Form 13B is mentioned as Cover A and the envelop containing the declaration and Form 13B is placed in the Cover B i.e. outer cover. The cover B will contain the declaration form as well as envelop Cover A, containing therein the postal ballot paper. The mandate of Rule 54A of the Rules of 1961 is that the returning officer first open the Cover B which contains the Form 13B and declaration by elector in Form 13A. Sub-rule (3) of Rule 54A requires that the other covers shall be opened one after another and as each cover is opened, the returning officer shall first scrutinise the declaration in Form 13A contained therein. On scrutinising this declaration in Form 13A if it is found that the declaration is not there or has not been duly signed and attested or is otherwise sub-

stantially defective or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13B that cover shall not be opened and after making an appropriate endorsement thereon, the returning officer shall reject the ballot paper therein contained.

Now, in the present case, the declaration in Form 13A did not find mention of the serial numbers of the ballot paper. Therefore, the returning officer has rejected them. Hence, the question before me is that whether the declaration form which did not contain the serial number of the ballot paper should be rejected or not because according to sub-rule (4) of Rule 54A of the Rules of 1961 if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13B, then such cover is not required to be opened and it has to be rejected by making an endorsement. Unfortunately, on a large number of envelopes no such endorsement was made. In case of different number being mentioned in the declaration form from the serial number endorsed on the cover in Form 13B i.e. serial number of the ballot paper then such ballot has to be rejected outrightly. But in the present case, about 340 and odds which were rejected by the returning officer did not contain any serial number of the ballot i.e. the serial number endorsed on the cover in Form 13B. Now, the question is whether such omission amounts to writing a different number and it should be rejected or not. Present is the case in which there is omission of mentioning the serial numbers of the postal ballots in the declaration form. Whether such omission of serial number of the ballot paper in the declaration form results in the rejection of the postal ballot or not.

Mr. Singhvi, learned counsel for the petitioner, submitted that mentioning of the serial numbers of the ballot papers in the declaration forms is not mandatory and, therefore, such postal ballots were wrongly rejected by the returning officer and they should be opened and counted. Secondly, it is submitted that it was the duty of the returning officer to have mentioned the serial number of the ballot paper in the declaration form and since it was not done, therefore, it should not have been rejected. In support of his contention, he has invited my attention to *Ganu Ram vs. Rikhi Ram, Kaundal and others* (AIR 1984 S.C. 1513); *Gangaram vs. Taruram and others* (AIR 1984 Raj. 183); *F. A. Sapa Ect. Etc. vs. Singora and others etc.* (AIR 1991 S. C. 1557); *S. Semmalai vs. R. Narayanan and ors.* (61 E.L.R. 116) and *Jyoti Bhawan Pratap Singh vs. Bodhrum Muritram* (50 E.L.R. 331).

As against this, Mr. Mehta, learned counsel appearing for the respondent No. 1, submitted that sub-rule (4) of Rule 54A of the Rules of 1961 is mandatory and if the serial number is not found in the declaration form then the returning officer has no option but to reject the same and secondly, it should be treated a substantial defect. In this connection, learned counsel has invited my attention to *Hari Vishnu Kamath vs. Ahmad Ishaque and others* (AIR 1955 S.C. 233). He has also invited my attention to the pas-

sage appearing at page 603 of the book entitled 'Election Law' by Kameshwar Dial (111 Edition 1977). He has also submitted that the Election Law is a code in itself and no equity or common law precepts are applicable in the present case. In that connection, learned counsel has invited my attention to *Jagan Nath vs. Jaswant Singh and others* (AIR 1954 S.C. 210); *Jyoti Basu and others vs. Debi Ghosal and others* (AIR 1982 S.C. 983) and *Rama Kant Pandey vs. Union of India* [(1993) 2 S.C.C. 438].

A bare reading of sub-rule (4) of Rule 54A of the Rules of 1961 makes it clear that the rule is mandatory in form as the word 'shall' has been used and it has to be strictly followed. The attempt of the learned counsel to show that though sub-rule (4) is mandatory in form but the omission to mention the serial number of the ballot paper in the declaration form should be treated to be directory, is absolutely misconceived. The language of sub-rule (4) of Rule 54A admits no exception. Sub-rule (4) of Rule 54A of the Rules of 1961 is very strict in its form and it clearly says that if the declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13B that cover shall not be opened and it has to be rejected by the returning officer making appropriate endorsement thereon. That shows that the declaration form should contain the serial number of the ballot paper and if it is not there then the envelop containing the postal ballot shall not be opened at all by the returning officer. Therefore, it comes to this that in the event of inconsistency in the serial number of the ballot paper in the declaration form and the serial number endorsed on the cover in Form 13B i.e. serial number of ballot paper. In that event the ballot has to be rejected and it is not required to be opened. But in the event of omission to mention the serial number of the ballot paper in the declaration form what would be the position. In my opinion, the answer is same as that of in the case of mentioning of different serial number of the ballot paper in the declaration form. The position is same either not giving the serial number or giving a wrong serial number of the ballot paper in the declaration form. The resultant position is the same i.e. such kind of ballot papers shall be rejected and there is no option with the returning officer. In fact, the declaration form as extracted above clearly says that it has to be signed by the elector. It says that "I hereby declare that I am the elector to whom the postal ballot paper bearing serial number has been issued at the above election" and thereafter the elector should sign and give his address. It is the elector who has to fill up the serial number of the ballot paper in his own hand. It is absolutely wrong to contend that the serial number should be mentioned by the returning officer. A bare reading of the above declaration would clearly show that it is the duty of the elector who has to fill in the serial number and then sign under such declaration and give his address. Therefore, it is not the duty of the returning officer to fill up the serial number of the ballot paper in the declaration form. It is clear that sub-rule (4) of Rule 54A of the Rules of 1961 is mandatory and omission as well as giving wrong serial number of the ballot

paper amounts to rejection of the postal ballot and such ballot paper is not required to be opened and counted.

Learned counsel has invited my attention to Ganu Ram's case (supra). This was a case in which the nomination paper was not found to be validly filled in under sub-section (2) of Section 33 of the Representation of the People Act, 1951 i.e. for the reserved seat for scheduled caste, the candidate did not specify caste by written declaration in the nomination paper. He, however, appended to nomination paper a certificate of S. D. O. specifying his caste as annexure. It was rejected being not valid nomination and in this context the Hon'ble Supreme Court held that though the nomination paper has prescribed form but there is no legal prohibition against the other requisite particulars being furnished in a separate paper appended to the form instead of writing them out in the form itself. In that connection it was mentioned that while submitting the returns in the matter of income-tax, wealth-tax etc. in such cases the annexure appended to the return should be treated as part of the return. In this view, the certificate which was produced as annexure to the nomination paper has to be treated as forming part of the nomination paper and the declaration contained therein that the candidate belonged to scheduled caste of Lohar must be understood and treated as a declaration by the candidate in the nomination form within the meaning of Section 33(2). In that context their Lordships of the Supreme Court observed as under :—

"In such a context the Court has to place a liberal and benevolent interpretation on the provisions contained in S. 33(2) rather than adopt a narrow, rigid, technical and purely literal construction."

But in the present case, sub-rule (4) of Rule 54A of the Rules of 1961 says that the result of such kind of invalid declaration like mistake in giving different serial number of the ballot paper in the declaration form would amount to rejection of the ballot.

Therefore, the effect of such mistake has already been given i.e. such ballot has to be rejected by the returning officer and he shall not open the envelop for counting the ballot contained therein. As such this case cannot afford us an useful assistance.

Likewise, F. A. Sapa's case (supra) was a case in which the question was whether the petition deserves to be rejected for mere defect in the verification of the election petition. That is not the case here. Here, as I have already mentioned above, the result of such omission and mistake has clearly been laid down in the Rules that such ballot has to be rejected and should not be counted. It is also observed that for any substantial defect the ballot has also to be rejected. We have a direct mandate of the rule that on account of omission to mention the serial number of the ballot paper of a different serial number is mentioned then such ballot paper has to be rejected and cannot be counted. Therefore, this is also of no avail to us.

Learned counsel has also invited my attention to Gangaram's case (supra). This was a case under the Rajasthan Panchayat and Nyaya Panchayat Election

Rules, 1960. This was a case relating to defect in the nomination paper. Rule 18 of the Rajasthan Panchayat and Nyaya Panchayat Election Rules required that the Returning Officer is obliged to reject the nomination paper even though the defect found in the nomination paper is of technical nature only and it is not material and has no bearing on the election. It is observed that even with regard to elections for the Lok Sabha and the Legislative Assemblies, clerical and technical defects in the nomination paper are not such defects which may justify the rejection of the nomination paper. Therefore, it was observed that in framing R. 18 no higher standards of accuracy is expected. It was also observed that it is necessary to mention in the nomination paper the ward number of the voters' list but no distinction can be made between failure to mention ward number and mentioning a wrong ward number in the nomination paper. Though in that case the nomination paper was accepted and the technical defect was overruled. But I regret to say that this judgment does not provide us any assistance because Rule 18 of the Panchayat Election Rules as it stood does not provide any such stipulation as provided in Rule 54A. Rule 54A has a mandate to reject such ballot. Rule 18 of the Panchayat Election Rules relates to scrutiny of nomination papers, which reads as under :—

- "18. Scrutiny of nomination papers.—(1) On the day and by the hour appointed under sub-clause (b) of clause (ii) of sub-rule (1) of R. 14 for the scrutiny of nomination papers, the Returning Officer shall examine the same.
- (2) At the time of such examination the candidates themselves and no other person may attend and the Returning Officer shall afford each of them—
- all reasonable facilities for examining the nomination papers delivered by others, and
 - a reasonable opportunity of making objections to any of them.
- (3) The Returning Officer shall decide all such objections and may, either on the basis of such objection or on his own motion, reject any nomination paper on any of the following grounds, namely :—
- that the candidate is not qualified or is disqualified for election.
 - that he is not identical with the person whose number or name on the voters' list is stated in the nomination paper to be the number or name of the candidate.
 - that the signature is not genuine or has been obtained by fraud, coercion or undue influence :
 - that there has been a failure complying with the provisions of Rule 16.
- (4) The Returning Officer shall endorse on each nomination paper his decision accept-

ing or rejecting the same and in case of rejection a brief statement of his reasons for such rejection.

- (5) The scrutiny shall be completed on the same day and no adjournment of the proceeding shall be allowed."

A bare perusal of Rule 18 makes it very clear that this rule and Rule 54A of the Rules of 1961 are a class apart. Here, the rule speaks in a positive manner that omission or different serial number would result in obvious rejection and the ballot paper is not required to be opened. Therefore, the result of such mistake is rejection as contained in sub-rule (4) of Rule 54A of the Rules of 1961 and, therefore, this authority does not help the petitioner. However, the observations made in this judgment does help the respondent, wherein Hon'ble S. C. Agrawal, J. as he then was, while sitting in Division Bench of this Court observed as under :—

"It is necessary to mention in the nomination paper the ward number of the voters' list but no distinction can be made between failure to mention ward number and mentioning a wrong ward number in the nomination paper."

Therefore, as discussed above, the resultant position is the same in the case of omission to mention or mentioning a different serial number in the declaration form. Therefore, to this extent this authority supports the learned counsel for the respondent.

Learned counsel has also invited my attention to S. Semmalai's case (supra). This is an election judgment from Madras High Court. In that case, it was observed that so long as the ballot paper is found to have been issued to the particular voter and the declaration contains that voter's signature which has been duly attested, the ballot paper could easily be identified to be that of the declarant. The absence of the name in the declaration form may often and in most cases result in the close scrutiny of the signature which is found in the declaration form so as to see whether the signature is that of the particular voter. The test to find out whether the declaration is substantially defective is to see whether the declaration could be identified to be that of the person to whom the ballot paper has been sent. If the identity could be established even in the absence of the name with the help of the signature duly attested, the defect cannot be said to be substantial. It was further observed that a declaration without the name of the declarant may be defective. But since the rule uses the words "substantially defective", it should be taken to refer only to those defects which are substantial, that is where the declaration cannot be said to be that of the voter. Therefore, the learned Judge directed the recount of such rejected postal ballots. But with great respect, I do not think that this authority can also be of any help to the learned counsel for the petitioner. But under Rule 54A, if different serial number of the ballot paper has been mentioned in the declaration form and declaration form is complete in all other respect i.e. it bears the signature of the elector and it is duly attested by the competent authority then too the

result will be the same i.e. the ballot is to be rejected. Likewise, if there is omission of the serial number in the declaration form and it is signed by the elector and attested by the competent authority, the resultant position will be the same. In either of the contingency i.e. there is different serial number or there is omission of the serial number in the declaration form the ballot paper has to be rejected and there is no go by from this. With great respect, I must say that it was not proper on the part of the learned counsel for the petitioner to cite this authority as this authority has already been overruled by the Hon'ble Supreme Court in the case of N. Narayanan vs. S. Semmalai and others (AIR 1980 S.C. 206). I must also record my great appreciation for the learned counsel for the respondent that he has brought to my notice this decision of the Hon'ble Supreme Court overruling this judgment.

In the case of Jyoti Bhushan Pratap Singh (supra), it was held that omission to mention the name of the constituency as a particular of the electoral roll number of the proposer was not a defect of a substantial character and the returning officer was not justified in rejecting the nomination on that ground. But that is not the case here. As I have already mentioned above, that the non-mentioning of the serial number of the ballot paper in the declaration form has also been ordained to be rejected, therefore, in face of the mandate of the rule the result is that the omission to mention and mentioning of different serial number of the ballot paper in the declaration form will result in rejection of the postal ballot. It also appears that the rule has been inserted with the solitary purpose that all the efforts should be taken to see that there should not be any chance of wrong ballot being mixed up. Therefore, in order to lend a great assurance all these kinds of checks have been made and one of the checks is that the declaration form should contain the serial number of the ballot paper. In fact, in Form 13B (Cover A) there is a clear endorsement on the Form 13B which is "POSTAL BALLOT PAPER Serial number of ballot paper". The serial number of the postal ballot paper has clearly been mentioned so as to enable the voter to mention the serial number of his ballot paper. This has been given with a view to avoid any chance of mistake, apart from an attestation of the signature in the declaration form by the competent officer.

Mr. Mehta, learned counsel for the respondent has also submitted that the returning officer has no option but to follow the mandate of the rules and the Tribunal cannot go beyond the mandate of the rules. In that connection, learned counsel has invited my attention to Hari Vishnu Kamath's case (supra). It was observed in that case that there can be no degrees of compliance so far as rejection is concerned, and that is conclusive to show that the provision is mandatory. Therefore, compliance of Rule 54A is mandatory and there is no question of degrees of compliance. Once it is held that it is mandatory then the result is that such invalid postal ballots have to be rejected. Mr. Mehta, learned counsel has also submitted that the

election law is a code in itself and no equity and common law precepts are applicable. In that connection, learned counsel has invited my attention to the decision delivered in the case of Jagan Nath (supra) wherein it was observed as under :—

“The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is no. an action at law or a suit in equity but is purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law.”

Similarly, this case has been followed in the case of Jyoti Basu and others (supra) and the same view has again been reiterated in the case of Rama Kant Pandey (supra).

Therefore, as a result of the above discussion I hold that the returning officer has rightly rejected these postal ballots which did not bear the serial number of the ballot paper in the declaration form as sub-rule (4) of Rule 54-A is mandatory and omission or mentioning of wrong/different serial number will meet the same fate and such invalid votes contained therein cannot be counted.

Mr. Mehta has also invited my attention to a passage from the book entitled “Election Law” by Shri Rameshwar Dial (3rd Edition-1977) at page 603 which reads as under :—

“In postal ballot papers, the ballot paper, after it has been marked by the voter to indicate his choice, is enclosed in the small cover. Then the small cover and the declaration in form 13A are enclosed in a large cover which is addressed to the returning officer. The declaration is as much necessary part of the process of voting by postal ballot paper as the marking of the paper itself. It is intended to guarantee that the ballot paper was in fact marked by the voter himself. This is a safeguard against any other person taking hold of the ballot paper by wrong delivery or otherwise and marking it in place of the real voter. When the declaration is substantially defective, or if there is no declaration in the large cover, or the declaration does not give the serial number of the ballot paper, or the serial number given in the declaration differs from the serial number of the ballot paper endorsed on the small cover, the primary condition of the guarantee about the genuineness of the voting fails. The returning officer is therefore enjoined to first examine the declaration and see if that condition precedent to the validity of the postal ballot paper has been satisfied. After this preliminary examination is over and he has made an appropriate endorsement on the cover in form 13B without opening the same and has kept them

in a separate sealed packet, all declarations which are found to be in order are kept in a separate packet similarly sealed before the small covers containing the ballot papers are opened. Then comes the turn of the covers containing the ballot papers to be opened and examined. The present rule deals with postal ballot papers where the choice is indicated by marking the ballot paper. In other words, the vote is recorded on the paper and in a particular manner.”

The above observations are amply applicable to the present case and has rightly summarised the whole situation.

The next is the category in which the ballot was sent in the form 13B Cover A i.e. the envelopment for ballot instead of in the Cover B i.e. Form 13C. This change of envelop as argued by the learned counsel for the petitioner does not amount to a substantial defect and such ballots which came in the Cover A should have been opened and counted by the returning officer. In this connection, I may usefully refer back to the provisions of sub-rule (4) of Rule 54A which provides a mandate that in the event of substantial defect then too also such envelop has to be rejected. There is a mandate under sub-rule (2) of Rule 54A of the Rules of 1961 that no cover in Form 13C received by the returning officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. Therefore, if the postal ballot has been received after the expiry of the time fixed in that behalf then such ballot has to be rejected outright. Sub-rule (3) says that the other covers shall be opened one after another and as each cover is opened, the returning officer shall first scrutinise the declaration in Form 13A contained therein. But unfortunately, in the present case, the envelop 13C was not received but directly Form 13B (Cover A) containing the ballot paper was received, whereas it should have come in form 13C i.e. envelop Cover B. However, the ballot was received directly in Cover A and there was no separate declaration. It appears that the declaration form must have been placed in Cover A whereas sub-rule (3) says that the other covers shall be opened one after another and as each cover is opened, the returning officer is required to first scrutinise the declaration in Form 13A. But in the present case, 13A was not there which ought to have been contained in Cover B. Therefore, when there is no declaration form then there was no point for the returning officer to have opened the Cover A and as such this is a substantial defect and the returning officer has rightly rejected this kind of postal ballots.

As a result of the above discussion it appears that only 4 votes of Shri Jai Singh were wrongly rejected and even if these votes are added in the total tally of Shri Jai Singh which comes to 1,89,404 even then the election of Shri Ram Singh is not affected except that his margin of votes is reduced from 168 to 163.

Thus, in the result, Shri Ram Singh has been rightly declared elected by the Returning Officer and the election petition filed by the petitioner for declaring him elected from this Constituency has no merit and the same is rejected.

A. K. MATHUR, J.